

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 3/31/2022

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MICHAEL SAWICKI,

Plaintiff,

-v-

COMMISSIONER OF SOCIAL SECURITY,

Defendant.  
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21-cv-2093 (LJL)

ORDER

LEWIS J. LIMAN, United States District Judge:

On March 16, 2022, the Court directed the Plaintiff to inform the Court whether he wishes to continue this action in light of his failure to file anything on the docket for approximately a year. *See* Dkt. No. 12. On March 21, 2022, counsel for defendant Commissioner of Social Security informed the Court that Plaintiff Michael Sawicki, who was proceeding without counsel, passed away on November 21, 2021. *See* Dkt. No. 13. Defense counsel also requested a *nunc pro tunc* extension of the Commissioner's time to file her motion for judgment on the pleadings, which was due in December 2021. *See id.*

No later than April 8, 2022, the Commissioner of Social Security is ORDERED, in accordance with Rule 25(a)(1) of the Federal Rules of Civil Procedure, to mail a Statement of Death and a copy of this Order to Mr. Sawicki's last known address and file proof of such service with the Court. *See, e.g., Yates v. Smith*, 2019 WL 4508929, at \*1 (N.D.N.Y. Sept. 19, 2019).

In accordance with Rule 25(a), a motion for substitution of the proper party must be filed within ninety days of service of the Statement of Death "by a party or by [Mr. Sawicki's] successor or representative." Fed. R. Civ. P. 25(a)(1).<sup>1</sup> In the absence of such a notice, the case "must be dismissed"—and the Court will do so without further notice to the parties. *Id.*

If there is a timely motion for substitution filed and that motion is granted, the Court will provide the substituted party an opportunity to respond to the Commissioner's request for a *nunc pro tunc* extension of time to file her motion for judgment on the pleadings. If there is no motion

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<sup>1</sup> The Court notes that any successor or representative who appears on behalf of the decedent may, depending on the circumstances, be required to appear through counsel in order to proceed. *Pridgen v. Andresen*, 113 F.3d 391, 393 (2d Cir. 1997) ("[A]n administratrix or executrix of an estate may not proceed *pro se* when the estate has beneficiaries or creditors other than the litigant."); *see also Guest v. Hansen*, 603 F.3d 15, 21 (2d Cir. 2010).

for substitution filed by July 7, 2022, the Court will dismiss the case.

SO ORDERED.

Dated: March 31, 2022  
New York, New York

A handwritten signature in black ink, appearing to read 'L. Liman', is written above a horizontal line.

LEWIS J. LIMAN  
United States District Judge